

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY BERNARD
RICHARDSON,

Defendant.

4:15-CR-3115

ORDER

This matter is before the Court on the defendant's motion to appoint counsel ([filing 76](#)). The defendant's motion will be denied.

The defendant's motion asks for counsel to be appointed to pursue relief under the [First Step Act of 2018](#), [Pub. L. No. 115-391](#), [132 Stat. 5194](#) (2018). The defendant represents that he "has issues that were made a matter of importance by the First Step Act, and needs help with this from an attorney." [Filing 76 at 1](#). But he does not identify what those issues are, and from a review of the record, none are apparent.

The provision of the First Step Act primarily relevant to convicted offenders, § 404, gave retroactive effect to §§ 2 and 3 of the [Fair Sentencing Act of 2010](#), [Pub. L. No. 111-220](#), [124 Stat. 2372](#) (2010). As relevant, those sections increased the amount of cocaine base needed to trigger higher mandatory minimum and maximum sentences under [21 U.S.C. § 841\(b\)\(1\)\(A\)\(iii\)](#) and [\(B\)\(iii\)](#) and [21 U.S.C. § 844](#). §§ 2-3, [124 Stat. 2372](#). The Fair Sentencing Act had the effect of reducing sentences for defendants convicted of offenses involving cocaine base.

But the defendant was convicted of conspiracy to distribute methamphetamine, not cocaine. [Filing 48 at 1](#). And furthermore, the only

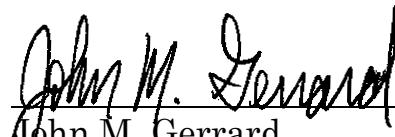
offenses covered by the First Step Act are those committed before the Fair Sentencing Act took effect—that is, those "committed before August 3, 2010." § 404(a), 132 Stat. 5194. The defendant was sentenced in 2015 for an offense committed between 2013 and 2015. [Filing 1](#); [filing 48](#). So, even if the defendant had been convicted of distributing cocaine base, the Court still could not entertain a motion under § 404 of the First Step Act because "the sentence was previously imposed . . . in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010." § 404(c), 132 Stat. 5194.

There is no constitutional right to appointed counsel in sentence modification proceedings. [*United States v. Harris*, 568 F.3d 666, 669 \(8th Cir. 2009\)](#). Nor does the defendant have a right to appointed counsel under the Criminal Justice Act, [18 U.S.C. § 3006A](#). [*Harris*, 568 F.3d at 669](#). Whether to appoint counsel is, therefore, committed to the discretion of the Court. *See id.* The Court declines to appoint counsel in this case because the only apparent basis for filing a motion under the First Step Act would be without merit.

IT IS ORDERED that the defendant's motion to appoint counsel ([filing 76](#)) is denied.

Dated this 15th day of March, 2019.

BY THE COURT:



John M. Gerrard
Chief United States District Judge